

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 75-015-17-1-5-00505-19
Petitioner: Martin Thompson
Respondent: Starke County Assessor
Parcel: 75-02-28-400-010.100-015
Assessment Year: 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Thompson contested the 2017 assessment of his property located at 2820 E. 400 N. in Knox. The Starke County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the residential property at \$136,000 (Land at \$14,500 and Improvements at \$121,500).
2. Thompson filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On November 20, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Thompson’s petition. Neither she nor the Board inspected the property.
3. Thompson appeared pro se. Starke County Assessor Michelle Schouten appeared pro se. Thompson, Schouten, and Reassessment Project Manager John Viveiros were all sworn as witnesses.

RECORD

4. The official record contains the following:

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| Petitioner Exhibit 1: | National Ag Safety Database article “Manure Gas Dangers” |
| Petitioner Exhibit 2: | Home Guides article “Is the Smell of Manure Dangerous?” |
| Respondent Exhibit 1: | “Community Impacts of CAFOs” publication by Purdue University Cooperative Extension Service ¹ |

¹ CAFO is an acronym for Concentrated Animal Feeding Operation.

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| Respondent Exhibit 2: | Property record card (“PRC”) for the subject parcel |
| Respondent Exhibit 3: | PRC for CAFO property labeled as Nagai #1 |
| Respondent Exhibit 4: | PRC for CAFO property labeled as Lawrence #1 |
| Respondent Exhibit 5: | PRC for CAFO property labeled as Lawrence #2 |
| Respondent Exhibit 6: | Aerial map showing location of Thompson’s property and the three nearby CAFO properties |
| Respondent Exhibit 7: | 2017-2018 sales ratio data for subject neighborhood |
| Respondent Exhibit 8: | Relative proximity of CAFOs to subject property compared to seven sold properties |

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

OBJECTIONS

6. Thompson made a relevance objection to all of the Assessor’s exhibits because he questioned whether the CAFOs discussed in the exhibits were of the same size and type as those located near the subject property. However, Respondent Exhibit 2 is merely the PRC for the subject property. And we find all of the remaining exhibits to be at least minimally relevant to the issue at hand. We therefore overrule Thompson’s objection.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).
8. Here, the assessment did not increase by more than 5% from 2016 to 2017. Thompson therefore has the burden of proof.

SUMMARY OF CONTENTIONS

9. Thompson’s case:
 - a. Thompson contends the odor from a neighboring hog farm is a nuisance that adversely affects the market value of his property. The fumes from the hog farm contain dangerous gases, and they cause sickness just from breathing them. There is also a concern that the manure will affect Thompson’s well water. *Thompson testimony; Pet’r Exs. 1, 2.*

- b. The CAFOs' presence has also impaired Thompson's pursuit of happiness because he cannot use the property as he chooses. The odor from the hog farm limits outdoor activities. It is hard to plan family gatherings or enjoy the pool. Thompson cannot keep the windows open or hang laundry outside because of the odor. And he is forced to use his central air conditioning more often because he cannot leave the windows open. *Thompson testimony.*
- c. Thompson questioned whether the CAFOs located near the sold properties were of a similar size and type as the CAFO near his property. He believes that it would be hard to sell the property for its assessed value. He believes that the value should be reduced to \$85,000, although he has no support for that figure. *Thompson testimony.*

10. The Assessor's case:

- a. The Assessor documented and analyzed the five operational CAFOs and all of the residential properties within two miles of each CAFO. Viveiros developed a scoring system taking into consideration the proximity of the CAFO, the size of the CAFO, and the prevailing wind direction. He compared the subject property to seven sold properties located within two miles of a CAFO. At present, the subject property is the only property within two miles of more than one CAFO and the only one located within two miles of the largest CAFO. Viveiros acknowledged that the seven sold parcels are likely less affected by the hog odor than the subject property, but they represent the best market data relevant to this issue. *Viveiros testimony; Resp't Exs. 6, 8.*
- b. While the Assessor concedes the Petitioner's property is the most likely to be affected by hog odor, two of the three CAFOs closest to the Petitioner's property were not built until the fall of 2016. And they were not operational until early 2017, which is after the January 1st valuation date. The Assessor is sympathetic to the concerns of the Petitioner, but they could not find any evidence to quantify or otherwise support a reduction in value. *Viveiros testimony.*
- c. The sales ratio study shows that the properties closest to the CAFOs have a lower median sales ratio. This is actually the opposite of what one would expect if the CAFOs were having a negative effect on the valuation of the property. *Viveiros testimony; Resp't Ex. 7.*

ANALYSIS

- 11. Thompson failed to make a prima facie case for reducing the property's 2017 assessment. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or

- “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2017, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
- c. Thompson contends his 2017 assessment should be \$85,000, but he failed to present any probative market-based evidence to support that value. While the surrounding CAFOs may have a negative effect on the property’s value, statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Because Thompson offered no probative market-based evidence to demonstrate his property’s correct market value-in-use, he failed to make a prima facie case for reducing its 2017 assessment. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the 2017 assessment.

ISSUED: February 4, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.